Supreme Court, U.S.
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No. 15-474

IN THE
Supreme Court of the United States

ROBERT F. MCDONNELL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF OF *AMICI CURIAE* JUDICIAL WATCH, INC. AND ALLIED EDUCATIONAL FOUNDATION IN SUPPORT OF RESPONDENT

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QUESTION PRESENTED

Whether the court of appeals correctly upheld the jury's finding that petitioner's *quid pro quo* bribery scheme violated the honest services fraud statute, 18 U.S.C. § 1346, and the Hobbs Act, 18 U.S.C. § 1951, because the things petitioner agreed to do in exchange for personal benefits were "official actions."

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INTEREST OF THE *AMICI CURIAE*[1]

Judicial Watch, Inc. ("Judicial Watch") is a not-for-profit, educational foundation that seeks to promote integrity, transparency, and accountability in government and fidelity to the rule of law. Judicial Watch investigates and reports on government corruption. It also seeks to prevent government corruption through public interest litigation. In addition, Judicial Watch regularly files *amicus curiae* briefs and has appeared as an *amicus curiae* in this Court on a number of occasions.

The Allied Educational Foundation ("AEF") is a nonprofit charitable and educational foundation based in Englewood, New Jersey. Founded in 1964, AEF is dedicated to promoting education in diverse areas of study. AEF regularly files *amicus curiae* briefs as a means to advance its purpose and has appeared as an *amicus curiae* in this Court on a number of occasions.

Amici seek to participate in this case for the purpose of highlighting the important role the honest services fraud statute and Hobbs Act serve in prosecuting public corruption. *Amici* believe there is an urgent and continuing need for effective prosecution of public corruption. *Amici* urge the Court to

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[1] Pursuant to Supreme Court Rule 37.6, *Amici Curiae* states that no counsel for a party authored this brief in whole or in part and that no person or entity, other than *Amici Curiae* and their counsel, made a monetary contribution intended to fund the preparation and submission of this brief. All parties have consented to the filing of this brief; letters reflecting the parties' consent have been filed with the Clerk.

adopt a construction of 18 U.S.C. § 1346 (the "honest services statute") and 18 U.S.C. § 1951 (the "Hobbs Act") that preserves their utility as critical prosecutorial tools in fighting public corruption.

SUMMARY OF THE ARGUMENT

The honest services statute and the Hobbs Act have served as critical tools in prosecuting public corruption. The Court should adopt a broad interpretation of what constitutes an "official act" as not to deprive prosecutors of these critical tools

ARGUMENT

I. ROBUST PROSECUTION IS NEEDED TO FIGHT PUBLIC CORRUPTION.

Public officials have a duty to act in the best interest of the people who elect them. When they make decisions based on personal interest, they are defrauding the public. The honest services statute criminalizes government corruption by punishing those who execute a scheme to deprive another of the right to "honest services." The Hobbs Act prohibits extortion "under color of official right."

Petitioner was convicted of violating these statutes as he accepted more than $175,000 in personal benefits (loans and luxury items) in exchange for agreeing to use the power of his office on behalf of his benefactor. In considering whether the actions taken by Petitioner constituted "official acts," *amici* urge the Court to adopt as broad as possible inter-

pretation of these statutes, consistent with the U.S. Constitution and the intent of Congress.

The prevention of corruption is essential not only to make government work for its intended purpose, *e.g.*, ensure that public officials are using their office to further the public interest and not to enrich themselves or others, but also to preserve public confidence in the democratic process. As this Court has observed: "[A] democracy is effective only if the people have faith in those who govern, and that faith is bound to be shattered when high officials and their appointees engage in activities which arouse suspicions of malfeasance and corruption." *United States v. Miss. Valley Generating Co.*, 364 U.S. 520, 562 (1961).

The people's faith is eroding. According to a recent Gallup poll, three in four Americans (75%) last year perceived corruption as widespread in the country's government. This figure is up from two in three in 2007 (67%) and 2009 (66%). *See* http://www gallup.com-/poll/185759/widespread-government-corruption.aspx?version=print.

This decline in public confidence accompanies a decline in prosecutions of public officials. A long-term decline in federal prosecutions for public corruption has continued and reached a 20 year low.

Data from the Justice Department show that 505 individuals were prosecuted for corruption offenses during FY 2015, a decline of 3.6 percent from FY 2014 and down more than 30 percent from five years

ago. For the first four months of FY 2016, there have been just 140 new official corruption prosecutions. This is the lowest level reported for such prosecutions in the last 20 years. *See* Transactional Records Access Clearinghouse, http://trac.syr.edu/tracreports/crim/419/ (March 23, 2016).

Moreover, the Obama administration has pursued 16 percent fewer public corruption charges against federal employees than the administrations of Presidents Bill Clinton and George W Bush, according to a 2014 DOJ report to Congress on public integrity. *See* Report to Congress on the Activities and Operation of the Public Integrity Section for 2014 (Obama administration has filed an annual average of 390 such prosecutions compared to Clinton (1995-2000) average of 468 federal employees and Bush (2001-2009) average of 467).

In this context, a broad interpretation of what constitutes an "official act" will strengthen the honest services statute and the Hobbs Act as tools in the fight against corruption.

II. THE HONEST SERVICES STATUTE AND HOBBS ACT HAVE A VITAL ROLE IN THE FIGHT AGAINST PUBLIC CORRUPTION.

These statutes have been an indispensable tool in many kinds of cases. Public officials have been prosecuted for taking campaign contributions in expectation of government action. Others have been prosecuted for omitting income on their financial disclosure statements and voting against legislation

affecting their income that was not disclosed. And others have been prosecuted for taking sham jobs with businesses and government agencies.

Hundreds of public officials have been successfully prosecuted for depriving the public of "honest services" and violating the Hobbs Act. Some of these include:

- Rod Blagojevich, former Illinois governor, indicted in 2009 for conspiring to commit honest services fraud, as well as for soliciting bribes, including attempting to sell Barack Obama's Senate seat.

- Randy "Duke" Cunningham, a former Congressman from California, convicted of corruption charges including honest services fraud, was sentenced in March 2006 to eight years in prison after pleading guilty to multiple corruption charges involving his acceptance of more than $2.4-million in homes, yachts, antiques, Persian rugs and other items from defense contractors.

- Former Illinois governor George Ryan was convicted in 2006 of honest services fraud, in addition to racketeering, tax fraud, obstruction of justice, and making false statements to federal agents.

- Former Alabama Governor Don Siegelman, convicted in 2006 of honest services fraud, in addition to conspiracy, bribery, and obstruc-

tion of justice, involving a $500,000 contribution to his campaign to establish a lottery, allegedly in exchange for appointing the donor to a board that regulates hospitals.

- Washington lobbyist Jack Abramoff pled guilty in 2006 to honest services fraud in addition to conspiracy and tax evasion; he was convicted in 2008 of further charges of honest services fraud in addition to charges of conspiracy and tax evasion.

- Bob Ney, a former congressman from Ohio, convicted of corruption charges including honest services fraud, was sentenced in 2007 to 30 months in prison after he admitted corruptly accepting luxury vacation trips, skybox seats at sporting events, campaign contributions and expensive meals from Abramoff.

- Ira Blackwood, a Chicago police officer, convicted under the Hobbs Act for accepting bribes from an FBI agent to influence pending cases in Cook County Circuit Court.

- John Bencivengo, former mayor of Hamilton Township, New Jersey, convicted under the Hobbs Act for accepting money in exchange for influencing the Hamilton Township school board to refrain from putting contracts up for competitive bidding.

- Former Alaska state legislator Bruce Weyhrauch was convicted in 2007 of honest

services fraud in addition to bribery and extortion.

- Judges Mark Ciavarella and Michael Conahan were convicted of honest services fraud and conspiracy in the "Kids for Cash" scandal for accepting money in exchange for sending juveniles to for-profit detention center.

- Wayne R. Bryant, a former Democratic New Jersey state senator, convicted of multiple corruption charges, including honest services fraud, for using his power and influence to obtain a low-show job at a state School of Osteopathic Medicine in exchange for bringing millions of dollars in extra funding to the school.

- Kevin Geddings, a former North Carolina lottery commissioner, sentenced in 2006 to four years for concealing work done for a lottery vendor when he accepted a seat on the state lottery commission in 2005.

- Mary McCarty, a Palm Beach, Florida County Commissioner, resigned in 2009 after admitting charges of honest services fraud involving the acceptance of discounts, free hotel stays and other undisclosed gifts provided by businesses doing business with the county

- Ray Nagin, former mayor of New Orleans from 2002 to 2010, convicted of bribery and honest services wire fraud, and conspiracy to commit same. Nagin solicited and accepted

bribes from contractors and others seeking to conduct business with New Orleans.

- William J. Jefferson, former Louisiana congressman, convicted for multiple bribery schemes; the FBI found $90,000 of cash in the his freezer, in $10,000 increments wrapped in aluminum foil and stuffed inside frozen-food containers.

- Anthony S. Seminerio, William Boyland, Jr., Carl Kruger, New York Assemblymen and a State Senator (Kruger), received bribes from David Rosen, CEO of a company that managed several NYC area hospitals.

- Richard E. Long, a U.S. Army employee, served as a Water and Petroleum Manager, convicted of honest services wire fraud and bribery; provided confidential information to a government contractor to help it during the bidding process in exchange for over half a million dollars in "loans."

- Edgar Gillock, former Tennessee state senator, convicted of honest services fraud. Honeywell employees sought Gillock's assistance in the sale of a computer to Tennessee's Department of Employment Security. The Honeywell employees indirectly paid Gillock for his "services" by routing the money through a consulting firm.

- Michael Myers, Raymond Lederer, Frank Thompson, Jr., John Murphy, former Congressmen convicted of bribery in the Abscam scandal, in which the Congressmen agreed to help employees and family members of employees of Abdul Enterprises emigrate to the U.S. in exchange for cash.

In light of these successes in fighting public corruption, it is vital that the honest services statute and Hobbs Act be preserved so that future cases such as these can be prosecuted. This is essential because, as one commentator has observed, "[p]olitical corruption is incompatible with a republican form of government. A republic strives above all else to govern for the public interest; corruption, on the other hand, occurs when government agents sacrifice the interests of everybody for the sake of a few." Jay Cost, *A Republic No More: Big Government and the Rise of American Political Corruption* (2015).

CONCLUSION

For the foregoing reasons, a*mici* respectfully request that this Court uphold the decision of the court of appeals.

Respectfully submitted,

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